

IN THE HIGH COURT OF GUJARAT
AHMEDABAD

FIRST APPEAL NO. 1294 OF 1989
FIRST APPEAL NO. 1295 OF 1989
FIRST APPEAL NO. 1296 OF 1989
FIRST APPEAL NO. 777 OF 1990
FIRST APPEAL NO. 778 OF 1990
A N D
FIRST APPEAL NO. 1583 OF 1990

Date of Decision: 8th January 1996

For Approval and Signature:

Hon'ble Mr. Justice : S.D. SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Appearance in First Appeal No. 1295 to 1296 of 1989

Mr. M.R. Bhatt for Mr. R.P. Bhatt for appellant
Mr. A.J. Patel for Res No. 1
Mr. M.R. Anand, GP with Mr. A.J. Desai, AGP for Res.No.2

Appearance in First Appeal No. 777 & 778 of 1990

Mr. M.R. Anand, GP with A.J. Desai, AGP for Appellant
Mr. A.J. Patel for Respondent No.1

Mr. M.R. Bhatt for Mr. R.P. Bhatt for Respondent No.2

Appearance in First Appeal No. 1583 of 1990

Mr. A.J. Patel for Appellant

Mr. M.R. Anand, GP with A.J. Desai, AGP for res.No.1

Mr. M.R. Bhatt for Mr. R.P. Bhatt for Respondent No.2

CORAM: S.D. SHAH, J.

Date : 8th January, 1996

COMMON ORAL JUDGMENT:

1. The Construction Manager, Indian Oil Corporation, appellant in First Appeal No.1294 to 1296 of 1989, proposed by his letter dated 17th December, 1977, to acquire the agricultural lands situated in the sim of village Hansalpur, Taluka Viramgam for the construction of the approach road from Viramgam Terminal Pump Station. The Second Additional Special Land Acquisition Officer followed the necessary procedure and Notification under Section 4 of the Land Acquisition Act came to be published on 27th January, 1983 and Notification under Section 6 was published on 30th August, 1984. Pursuant to the notice issued to the interested parties, the respondents claimants have appeared and have lodged their claims for compensation before the Second Additional Special Land Acquisition Officer and claimed compensation at the rate of Rs. 26 per square meter. After necessary enquiry and permitting the claimants to produce necessary evidence, the Second Additional Special Land Acquisition Officer fixed the market value of the lands in question at the rate of Rs.800 per acre = Rs. 8 per square meter. He accordingly passed his award in Land Acquisition Case No. 35 of 1981 on 13th of May 1986 and awarded the compensation to the claimants for their acquired lands at the rate of Rs. 8 per square meter.

2. It appears that being aggrieved and dissatisfied with such award passed by the Second Additional Special Land Acquisition Officer, the claimants applied for reference and matters were referred to the Second Joint District Judge, Ahmedabad (Rural) at Mirzapur. He decided the Land Acquisition Case No. 188 of 1987 and 187 of 1987 by judgment and award dated 12th of April, 1989, whereby he partially allowed the Land Reference Cases and awarded Rs. 7 per square meter as additional compensation for the lands acquired together with 30 per cent for the solatium and interest at the rate of 9 per cent per annum for a period of one year from the date of

taking over possession of the acquired lands.

3. Being aggrieved by the said common judgment and award passed by the Second Joint District Judge, Ahmedabad (Rural) at Mirzapur, the Indian Oil Corporation has preferred First Appeal Nos. 1295 of 1989 and 1296 of 1989.

4. Similarly, Manager (Construction) of the Indian Oil Corporation submitted proposal dated 25th of March, 1984 to the Collector, Ahmedabad for acquisition of certain parcels of land. The State of Gujarat thereupon after following necessary procedure, issued Notification under Section 4 on 26th of July, 1984 and another Notification under Section-6 on 30th May, 1985. Meanwhile, the possession of the lands was taken over by private negotiation. Thereafter, the land acquisition proceedings were initiated and Second Additional Special Land Acquisition Officer, Ahmedabad, by award dated 21st of March, 1986, awarded compensation at the rate of Rs. 9.50 per square meter.

5. Being aggrieved thereby the claimant respondent No.1 filed Reference under Section 18 and claimed the compensation at the rate of Rs. 50 per square meter. The Second Joint District Judge, Ahmedabad (Rural) at Mirzapur, by judgment and award dated 29th of April, 1989 granted compensation at the rate of Rs. 32 including the amount of Rs. 9.50 per square meter which was granted by the Second Additional Special Land Acquisition Officer. Being aggrieved by such judgment and award of the Second Joint District Judge, Ahmedabad (Rural) at Mirzapur, awarding Rs. 22.50 per square meter as additional amount of compensation, the appellant Indian Oil Corporation Limited has preferred First Appeal No. 1294 of 1989 and in such First Appeal, the claimant has also filed the cross objection.

6. In First Appeal No. 777 of 1990 and First Appeal No. 778 of 1990, are the cross appeals filed by the Second Additional Special Land Acquisition Officer, Ahmedabad, against the judgment and award of the Second Joint District Judge, Ahmedabad (Rural) at Mirzapur in Land Acquisition Case Nos. 187 and 188 of 1987, whereby he partially allowed the reference and awarded additional amount of compensation at the rate of Rs. 9/- per square meter. In substance, these two appeals are the cognate first appeals to First Appeal Nos. 1295 of 1989 and 1296 of 1989 because the party for whom the acquisition is made, namely, the Indian Oil Corporation Limited as well as the acquiring authority, namely, the Second Additional

Special Land Acquisition Officer, have preferred these appeals against the very judgment and award of Second Joint District Judge, Ahmedabad (Rural) at Mirzapur dated 12th of April, 1989.

7. The First Appeal No. 1583 of 1990 is preferred by the original claimant Bhikhabhai Bhagabhai as he was dissatisfied with the judgment and award dated 29th of April, 1989 passed by the learned Second Extra Asst. Judge, Ahmedabad (Rural) at Mirzapur in Land Acquisition Case No. 191 of 1987. His contention was that the learned Judge ought to have awarded the additional compensation of Rs. 40.50 per square meter having regard to the sale instances produced before him.

8. Mr. M.R. Bhatt, appearing for the appellant Indian Oil Corporation Limited in the aforesaid three First Appeals and Mr. M.R. Anand, learned G.P. with Mr. A.J. Desai, learned A.G.P. appearing for the Second Additional Special Land Acquisition Officer in First Appeal Nos. 777 of 1990 and 778 of 1990 very vehemently submitted before this Court that the Second Joint District Judge, Ahmedabad (Rural) at Mirzapur, was unduly liberal in awarding the additional compensation at the rate of Rs. 7 per square meter. They submitted that the amount of compensation awarded by the Second Addl. Special Land Acquisition Officer at the rate of Rs. 8 per square meter was quite just and proper as it was based on comparable sale instances and there was no justification for enhancing such award. They also submitted that for various parcels of land at village Hansalpur when acquisition was made for other purpose, such as construction of road, etc., in other land Reference Cases, the amount of Rs. 10 per square meter was awarded and that therefore additional amount of Rs. 7 per square meter was quite excessive and unreasonable. On the other hand, Mr. A.J. Patel, learned Counsel appearing for the claimant in these appeals submitted that the amount of additional compensation awarded being Rs. 7 per square meter by the impugned judgment and award of the Second Joint District Judge, Ahmedabad (Rural) at Mirzapur, is quite on the lower side and that higher amount of compensation ought to have been awarded. He submitted that the claimant Bhikhabhai Bhagabhai has filed substantive First Appeal No. 1583 of 1990 against the judgment and award dated 29th April, 1989 passed by Second Joint District Judge, Ahmedabad (Rural) at Mirzapur and has claimed the additional amount of compensation at the rate of Rs. 40.50ps per square meter. He submitted that all these parcels of lands are situated at village Hansalpur which is at a distance of

approximately 5 to 6 kilometer from Viramgam. He submitted that Viramgam town is a highly developed town, having a mill, 6 to 7 ginning presses, number of higher secondary schools and primary schools and a full fledged college. The said town is connected by National Highway on all its sides and is a highly developed town. He submitted that number of factories have also been established in or around Viramgam town and it is a Taluka Headquarter and a highly developed commercial centre. He, therefore, submitted that the additional amount of compensation awarded at the rate of Rs.7/- per square meter is not in any way excessive or unreasonable, but, it is quite conservative and that looking to the location of the land, its fertility and future development potentialities, higher amount of compensation ought to have been awarded. He further submitted that in First Appeal No. 1583 of 1990, the land is acquired for Indian Oil Corporation Limited for building housing colony for its staff and the Second Additional Special Land Acquisition officer has awarded Rs. 9.50 ps per square meter and the Court has awarded additional amount of compensation at Rs. 24.50, thus making the total of Rs. 34/- per square meter. By this First Appeal, the claimant has claimed additional amount of Rs. 3 per square meter towards compensation. He also pointed out that the land in question in the said case was located in Viramgam town itself and therefore the compensation awarded was quite just and proper. The two sale instances being at Exhibit No. 19 and 20 established that the land was sold at the rate of Rs. 43.34ps per square meter by sale deed dated 10th of December, 1975 and in the second case it was sold at the rate of Rs. 175/- per square meter by Government to Jain Vishranti Gruh in the year 1981. Looking to the price fetched by the land even in 1975 or 1981, he submitted that the amount of compensation awarded at the rate of Rs. 34 per square meter in Land Acquisition Case No. 191 of 1987 cannot be said to be excessive and that higher amount of compensation was required to be awarded. Lastly he submitted that the Division Bench of this Court has, in First Appeal No. 2265 of 1992 and 2264 of 1992, where the land was acquired for Indian Oil Corporation Limited, summarily dismissed the First Appeals preferred by the Second Additional Special Land Acquisition Officer and has held that there were no compelling reasons to interfere with the award passed by the Court. He further pointed out that in First Appeal No. 2265 of 1992, in fact, award of Rs. 37/- per square meter is upheld by the High Court and, therefore, no interference of this Court was called for when only additional amount of Rs. 7/- per square meter is awarded by the Second Joint

District Judge, Ahmedabad (Rural) at Mirzapur. He has also placed reliance upon the subsequent decision of the Division Bench of this Court in First Appeals No. 295 of 1989, 296 of 1989 and 297 of 1989, wherein for the very acquisition for Indian Oil Corporation Limited, the Indian Oil Corporation has preferred appeal being aggrieved by the judgment and award of the Second Extra Assistant Judge, Narol. The said Division Bench relied upon the judgment of the earlier Division Bench in First Appeal No. 2285 of 1992 and dismissed the First Appeal preferred by the Indian Oil Corporation Limited. In view of the aforesaid rival submissions, this Court is called upon to decide the question as to whether any interference is called for in the judgment and award passed by the Second Joint District Judge, Ahmedabad (Rural) at Mirzapur in Land Acquisition Case No. 188 of 1987 and 187 of 1987, whereby the additional compensation at the rate of Rs. 7/- per square meter is awarded. The total amount of compensation, in fact, works out at Rs. 15 per square meter.

9. As pointed out hereinabove, First Appeal No. 1295 and 1296 of 1986 and First Appeal No. 777 of 1990 and 778 of 1990 are cognate First Appeals preferred against the very judgment and award of Second Joint District Judge, Ahmedabad (Rural) at Mirzapur and both the acquiring authority as well as the Indian Oil Corporation Limited, for whom the land is acquired, have preferred appeals. The judgment and award of the Court under challenge in these four appeals is based on comparable sale instances of parcels of land at village Hansalpur. The Trial Court has taken into consideration various relevant factors such as the locality of the lands in question, being very near to a highly developed Viramgam town, equal fertility of the land, the facility of electricity supply and irrigation, availability of large number of schools, hospitals, markets, etc and the fact that the village is connected by National Highways with whole town like Viramgam as well as highly developed city like Ahmedabad. The Court has also taken into consideration the comparable sale instances and has found that looking to the date of the issuance of Section 4 Notification two instances of sale were comparable and that based on such comparable sale instances, the award of compensation made by the Second Additional Land Acquisition Officer at Rs. 8/- per square meter was quite conservative or below reasonable and that it was required to be enhanced. He has therefore by applying the method of Comparable Sale Instances, which were relevant in point of time as well as from the nature of vicinity of the lands acquired, come to the conclusion

that if additional amount of Rs. 7/- was awarded per square meter, it would work out to a reasonable and proper market value of the land. The aforesaid findings are based on well reasoned judgment and award and in view of the fact that for various parcels of land at village Hansalpur, the Division Bench of this Court has confirmed the award for higher amount of compensation, it would not be just and proper to interfere with such just and proper award and therefore all the said four appeals are required to be dismissed and are dismissed with no order as to costs in these appeals.

10. Turning now to the First Appeal No. 1294 of 1989 which is filed by the Indian Oil Corporation against the judgment and award of the Second Joint District Judge, Ahmedabad (Rural) at Mirzapur in Land Acquisition Case No. 191 of 1987, it shall have to be kept in mind that the Court has granted the additional compensation at the rate of Rs. 22.50 per square meter and the amount works out to Rs. 32/-. The parcels of land under acquisition is located at Viramgam town itself. The price which the land at Viramgam town would fetch obviously be higher than the price which the land would fetch at Hansalpur village. Against this very judgment and award, the claimant has also preferred First Appeal No. 1583 of 1990 contending that the additional compensation ought to have been awarded at Rs. 40.50ps per square meter. As pointed out hereinabove, amount awarded is Rs. 32/- per square meter. In view of the judgment of the Division Bench of this Court, where the award of Rs. 34/- per square meter and Rs.37/- per square meter is upheld by the Division Bench, the award of Rs.32/- per square meter cannot be said to be in any way excessive, unreasonable or disproportionate. It is just, proper and reasonable award. In fact, the Court has reached the fair market price and, therefore, no interference of this Court is called for. Therefore, the aforesaid two First Appeals are also required to be dismissed and the same are dismissed with no order as to costs in these first appeals.
